

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**GOFF GROUP, INC., et al.,**

**Plaintiffs,**

**v.**

**PHOENIX-DURANGO, L.L.C., et al.,**

**Defendants.**

**CIVIL ACTION NO.  
CV - 06-389**

**RESPONSE TO ORDER TO SHOW CAUSE REGARDING COMPANION PROPERTY  
& CASUALTY INSURANCE COMPANY'S MOTION TO DISMISS**

COMES NOW Phoenix Durango, L.L.C., defendant and counterclaim plaintiff in the above-styled action, and in response to this Court's Order to Show Cause regarding Companion Property & Casualty Insurance Company's Motion to Dismiss, states that Companion Property & Casualty Insurance Company's ("Companion") Motion to Dismiss is due to be granted because it does not appear that Companion has a lien on the same property which Phoenix Durango is seeking to foreclose upon.

Phoenix Durango, L.L.C. ("Phoenix Durango"), purchased Community Bank & Trust's mortgage, attached as Exhibit B to Companion's Motion to Dismiss, which was given by Goff Group, Inc., to Community Bank & Trust, on the following described real estate:

Lot 1-A, Block A, according to the Map of Technacenter Plat No. 2, as said Map appears of record in the Office of the Judge or Probate of Montgomery County, Alabama, in Plat Book 41, at Page 150.

Based upon the initial information available to Phoenix Durango at the time of filing its foreclosure counterclaim, Phoenix Durango believed Companion also had a mortgage on the same property. It appears, however, upon review of additional real estate documents and upon Phoenix Durango's receipt of a title report on Lot 1-A, Block A, that Companion does not have a

lien on the property at interest in this lawsuit. Instead, Companion has a mortgage on the two neighboring parcels, which were also owned by Goff Group, Inc., and later transferred to John W. Goff, known as the "3.722 acre parcel" and the "2.182 acre parcel." *See* Companion's Mortgage, attached as Exhibit C to its Motion to Dismiss. Therefore, Companion does not have a lien on the property which is the subject of Phoenix Durango's foreclosure counterclaim.

WHEREFORE, ABOVE PREMISES CONSIDERED, Phoenix Durango does not object to Companion Property & Casualty Insurance Company's Motion to Dismiss, but instead states that Companion Property & Casualty Insurance Company's Motion is due to be granted for Companion's lack of a lien on the property which is the subject-matter of this foreclosure counterclaim.

s/Vernon L. Wells, II

s/C. Ellis Brazeal

Attorneys for Defendant and Counterclaim Plaintiff  
Phoenix-Durango, LLC.

OF COUNSEL

Walston, Wells & Birchall, LLP  
1819 5<sup>th</sup> Avenue North, Suite 1100  
Birmingham, Alabama 35203  
Telephone: (205) 244-5200  
Telecopier: (205) 244-5400

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of July, 2006, I electronically filed the foregoing RESPONSE TO ORDER TO SHOW CAUSE REGARDING COMPANION PROPERTY & CASUALTY INSURANCE COMPANY'S MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Thomas T. Gallion, III  
Jamie Austin Johnston  
Haskell, Slaughter, Young & Gallion, LLC  
PO Box 4660  
Montgomery, Alabama 36103-4660

F. Chadwick Morriss  
Alan Thomas Hargrove, Jr.  
Rushton, Stakely, Johnston & Garrett, PC  
PO Box 270  
Montgomery, Alabama 36101-0270

Jason James Baird  
Slaten & O'Connor, PC  
105 Tallapoosa Street, Suite 101  
Montgomery, Alabama 36104

Leura Garrett Canary  
Attention: Patricia Allen Conover  
Assistant U.S. Attorney  
Post Office Box 197  
Montgomery, Alabama 36104

Issac Ripon Britton, Jr.  
Hand Arendall, LLC  
2001 Park Place North  
Suite 1200  
Birmingham, Alabama 35203

Winston Whitehead Edwards  
David Cushing Hilyer  
Craddock, Reneker & Davis, LLP  
4142 Carmichael Road, Suite C  
Montgomery, Alabama 36106

Paul L. Beckman, Jr.  
Capouano, Beckman & Russell, LLC  
PO Box 4689  
Montgomery, Alabama 36103-4689

George Marion Neal, Jr.  
Anthony Ryan Smith  
Sirote & Permutt, PC  
PO Box 55727  
Birmingham, Alabama 35255-5727

Paul Kenneth Lavelle  
Yearout, Spina & Lavelle, PC  
1500 Urban Center Drive, Suite 450  
Birmingham, Alabama 35242

Donald Christopher Carson  
Janine L. Smith  
Burr & Forman, LLP

420 North Twentieth Street, Suite 3100  
Birmingham, Alabama 35203

and I hereby certify that I have mailed by U.S. Postal Service the document to the following non-CM/ECF participants:

Lewis B. Hickman, Jr.  
915 S. Hull Street  
Montgomery, Alabama 36104

Robert W. West  
Associate Area Counsel  
Internal Revenue Service, Room 257  
801 Tom Martin Drive  
Birmingham, Alabama 35211

Internal Revenue Service  
Insolvency Unit, Room 126  
801 Tom Martin Drive  
Birmingham, Alabama 35211

MBNA America Bank (Delaware)  
Registered Agent, MBNA America Bank (Delaware)  
1100 North King Street  
Wilmington, Delaware 19884

CSC Lawyers Incorporating Service, Inc.  
Registered Agent, Kemmons Wilson, Inc.  
150 Perry Street  
Montgomery, Alabama 36104

Daniel Realty Company  
Registered Agent, Meadow Brook North, LLC  
3595 Grandview Parkway, Suite 400  
Birmingham, Alabama 35243-1930

Willis of North America, Inc.  
Attention: Kellie Smits  
26 Century Boulevard  
Nashville, Tennessee 37214

CSC Lawyers Incorporating Service, Inc.  
Registered Agent, Stuart Allan & Associates, Inc.  
150 Perry Street  
Montgomery, Alabama 36104

s/Vernon L. Wells, II  
Of Counsel